upa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.362 OF 2002

Fulji Gaman Patel)
Convict No.76414)
Baroda Central Jail)
Baroda.).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.Arfan Saif, Advocate appointed, for the Appellant.

Dr.F.R.Shaikh, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 26TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The charge against the accused-Appellant is that he stabbed Naresh Kalan Patel on 22nd November 2000 at around 8.00 p.m. The injured Naresh succumbed to his injuries the next evening. The accused was tried and convicted for having committed offence punishable under Section 302 of the Indian Penal Code. He has been sentenced to suffer life imprisonment and to pay a fine of Rs.1,000/-.

2. The prosecution alleges that the accused use to sleep in the house of Naresh Kalan Patel, the victim. He would often reach the house in an inebriated condition. Naresh objected to this behaviour of the

accused due to which there was a quarrel between him and the accused. The accused had threatened to kill Naresh because of the objection raised by him. On 22nd November 2000, when the victim had gone to the tea stall of one Shankar, the accused came to the tea stall at about 8.00 p.m. Two other persons, Rajesh and Shailesh were also present at the tea stall. When the victim, Rajesh and Shailesh proceeded towards the house of one Vazir Patel from the tea stall, they saw the accused approaching them. He rushed towards the victim and stabbed the victim with an instrument used for tapping toddy known as "widhnu" in the vernacular. Naresh sustained injuries on his abdomen. The accused extricated the widhnu from Naresh’s abdomen and fled away with it from the scene of offence. The victim was removed to hospital for treatment. He was discharged on the same night after being administered medical aid. However, since the victim was still suffering from pain in the abdomen after he reached home, he was readmitted to hospital the next morning i.e. on 23rd November 2000. The Medical Officer of the Civil Hospital, Silvasa, where the victim was admitted, sent an intimation to the police station regarding the injuries sustained by the victim. The Police Head Constable reached the hospital and recorded the complaint of the victim, after ascertaining that the victim was fully conscious and in a position to make a statement. This statement was treated as a first information report on the basis of which a crime was registered against the

accused for attempt to commit murder under Section 307 of the Indian Penal Code. However, in the evening of 23rd November 2000, the victim became critically ill and expired. The charge was then changed from Section 307 to Section 302 of the Indian Penal Code. The accused was arrested on 24th November 2000. There were blood stains on his shirt which was seized when he was arrested and the panchanama was recorded. After the death of the victim, an inquest panchanama was also drawn up and the post mortem examination was conducted. The clothes of the deceased were seized. The accused was charged and his trial was committed to Sessions.

3. The prosecution has relied on the evidence of eight witnesses to prove the charge against the accused. The accused has also examined one witness. The prosecution has examined two eye witnesses, PW2 and PW3. These persons were with the deceased when he was attacked by the accused. These two witnesses had admitted the deceased to hospital. Both the witnesses have stated that they knew the accused and that he had attacked the victim all of a sudden after 8.00 p.m. on 22nd November 2000. PW1 and PW7 are the Doctors examined by the prosecution. PW1 had conducted the post mortem examination on the dead body and PW7 had initially treated the victim. The other witnesses i.e. PW4, PW5 and PW6 are the panch witnesses who have proved the inquest panchanama, arrest panchanama and seizure panchanama. PW8 is the Investigating Officer who has

recorded the statement of the deceased on 23rd November 2000.

4. We have scrutinised the entire evidence on record with the assistance of the learned Advocate appointed for the Appellant and the learned Additional Public Prosecutor and have come to the conclusion that the death of the deceased was undoubtedly a homicidal death. The ocular evidence is corroborated by the medical evidence on record. The evidence establishes the fact that the accused had in fact stabbed the deceased in the abdomen with a widhnu. Both, PW1 and PW7, have opined that a sharp object like the widhnu could cause the injuries which were sustained by the deceased. The Doctor examined on behalf of the defence has also opined that the injuries sustained by the deceased were caused by a sharp weapon. In such circumstances, in our opinion, where the ocular evidence is corroborated by the medical evidence, there is no room for doubt. The prosecution has proved that the accused was responsible for the homicidal death of the deceased. We are in complete agreement with the inference drawn by the learned trial Court that the accused had committed culpable homicide. The question is whether this culpable homicide amounts to murder or falls within the exceptions to the Section.

5. In our opinion, the prosecution has established

the motive of the accused for killing the deceased. The prosecution has also established that the injury inflicted on the deceased was such that would or was likely to cause the death of the deceased. However, the intention to cause the death has not been established. The prosecution has established that the blood stained clothes and the recovery of the widhnu made at the instance of the accused. Both, the widhnu and the clothes which were stained with blood belonged to the same group as that of the blood group of the deceased. In such circumstances, we find that the accused is guilty of offence punishable under Section 304 Part-I of the Indian Penal Code and is liable to suffer rigorous imprisonment for a period of ten years.

6. Appeal partly allowed. The conviction and sentence under Section 302 of the Indian Penal Code is set aside. Instead, the Appellant-accused is convicted under Section 304 Part-I of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for a period of ten years.

7. Appeal disposed off accordingly.

8. The fees of the Advocates appearing for both the Appellant the State are quantified at Rs.2,000/- (Rupees Two Thousand only) each.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)